SINGLE BENCH (4)

CF1002

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

WRIT PETITION (C) NO. 5285 OF 2006

PETITIONER
DEFENDANTS

Smt. Vibha Singh Thakur W/o Ajay Singh Thakur, aged about 36 years, R/o Nirala Nagar, Bilaspur, Tahsil & District Bilaspur (Chhattisgarh)

VERSUS

RESPONDENTS
PLAINTIFFS

1. [DEAD] Sukhdev, S/o Neelkanth Satnami, aged about 62 years
2. T. S. R. Naidu, S/o T. D. R. Naidu, aged about 67 years,
3. Langdu, S/o Bhulai Satnami aged about 47 years,

   Respondents No. 1 to 3 all residents of Gandhi Nagar, Bilaspur Tahsil & District Bilaspur (Chhattisgarh)
4. Fedrick Donald Enis, S/o E. Enis, aged about 67 years, Resident of I.T.I., Koni, Bilaspur Tahsil & District Bilaspur (Chhattisgarh)
5. Vibhakar Singh, S/o Martand Singh , aged about 39 years,
6. Nilesh Dutt Bhatt, S/o Suresh Dutt Bhatt, aged about 39 years,
7. Yashoda Devi, W/o Ramnath aged about 62 years,

   Respondents No. 5 to 7 all residents of Gandhi Nagar, Bilaspur Tahsil & District Bilaspur (Chhattisgarh)
8. Kaushilya Bai, W/o Narayan Soni,
9. Gulabchand, S/o Narayan Soni, aged about 50 years,

P.R. No. 5312/06
Presented by Smt. Dubey Adv. (Rajp)
Dated 23/9/06

OATH COMMISSIONER APARNA MALVIYA Bilaspur Chhattisgarh

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10. Subhash Chandra, S/o Narayan Soni, aged about 62 years,

11. Prakash Chandra, S/o Narayan Soni, aged about 55 years,

12. Gyanchand, S/o Narayan Soni, aged about 53 years,

Respondents No. 8 to 12 all R/o Main Road, Sadar Bazar Mungeli, Tahsil Mungeli, Dist. Bilaspur (Chhattisgarh)

13. Taan Singhn (Dead), S/oLal Singh aged about 85 years, R/o Daupara, Mungeli,Tahsil Mungeli, Dist. Bilaspur (CG)

14. State of Chhattisgarh through Collector, District Bilaspur (CG)

WRIT PETITION UNDER ARTICLE 227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN NATURE OF CERTIORARI, MANDAMUS, PROHIBITION AND OTHER SUITABLE WRIT/WRITS, DIRECTION/DIRECTIONS, ORDER /ORDERS:

(79) AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Writ Petition No.5285/2006

Smt.Vibha Singh Thakur
Vs.
Sukhdev (dead) and others

Appearance:

Shri Manindra Shrivastava, Sr. Advocate with Shri Anand Verma, for the petitioner.

Shri Anand Kumar Gupta, counsel for respondents no.2,3,4, 6, 7 & 8.

Shri Malay Kumar Bhaduri, counsel for respondent no.5.

None for other respondents.

ORDER
(02.3.2007)

Sunil Kumar Sinha, J,

(1) The petitioner, who is plaintiff before the trial Court, has challenged the legality, validity and propriety of the order dated 18.8.2006 passed in Civil Suit No.57-A/2005 by the II Civil Judge, Class-II, Bilaspur. By the aforesaid order, the learned trial Court has dismissed an application filed on behalf of the petitioner/ plaintiff under Order XVII Rule 1 of the Code of Civil Procedure seeking adjournment, when the matter was fixed for plaintiffs' evidence.

(2) The brief facts, necessary for disposal of this petition, are that the plaintiff has filed the aforesaid civil suit for declaration of her title, permanent injunction and also for possession against as many as 14 defendants. This suit was fixed for plaintiff's evidence on 18.8.2006. On the said date, counsel for the plaintiff filed an application under Order XVII Rule 1 C.P.C., pleading that as the

plaintiff is working as a Professor in C.M.D. College, Bilaspur and she could not get leave for the said date, hence neither the plaintiff nor her witnesses are present in the Court, therefore, in all fairness, one more opportunity may be afforded to the plaintiff to adduce evidence in this case. This application was vehemently opposed by the counsel for the defendants.

(3) Learned trial Court, after perusal of the record, dismissed the aforesaid application on the ground that on earlier three occasions also, when the matter was fixed for evidence i.e., on 17.2.2006, 08.3.2006 and 25.3.2006, the plaintiff had already taken adjournments, therefore, this 4th adjournment on 18.8.2006 would not be possible in view of the amended provisions of Order XVII Rule 1 C.P.C., which permits only 3 adjournments in such situations. While rejecting the said application, apart from referring to the provisions of Order XVII Rule 1 C.P.C., the trial Court has also said that the aforesaid application, filed by the plaintiff, does not appear to be proper and bonafide and in view of the aforesaid provisions, the same cannot be allowed.

(4) Learned counsel for the petitioner argues that the provisions of Order XVII Rule 1 C.P.C., as amended by the recent Act are not mandatory, as they are directly, and the trial Court erred in law in passing an order of refusal of 4th adjournment to the plaintiff only on the grounds of provisions of Order XVII Rule 1. His submission is that the trial Court would have independently applied its mind in the prevailing facts and circumstances of this case and then only an order in this regard would have been passed. He submits that it is always expedient in the interest of justice to finally

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adjudicate any matter *subjudice* before a Court and not to take recourse to the technicalities of law, which have been brought into force with a particular legislative intent. He refers to the decision rendered in the matter of ***Salem Advocate Bar Association, T.N. –Vs- Union of India (2005) 6 SCC Pg. 344*** (for short Salem's case).

(5) On the contrary, learned counsel for the respondents support the order passed by the trial Court. Their submission is that the plaintiff is a habitual defaulter, she never intends to come to the Court and she has already taken 3 adjournments and the trial court has rightly closed the rights of the plaintiff to adduce the evidence by rejecting her application filed under Order XVII Rule 1 C.P.C.

(6) I have heard learned counsel for the parties at length and have also perused the records of the writ petition.

(7) Order XVII of the Code of Civil Procedure deals with adjournments. Rule 1 provides that the Court may grant time and adjourn hearing. Sub-Rule (1) of Rule 1 further provides that the Court may, if sufficient cause is shown, at any stage of the suit, grant time to the parties or to any of them, and may from time to time adjourn the hearing of the suit for reasons to be recorded in writing. A proviso has been added to this sub-rule which says that no such adjournment shall be granted more than 3 times to a party during hearing of the suits. Further, Sub-rule (2) of order XVII provides for costs of adjournment. It has been provided that in every such case the Court shall fix a day for the further hearing of the suit, and shall make such orders as to costs occasioned by

the adjournment or such higher costs as the Court deems fit. Further proviso has also been added in sub-rule (2) in form of certain clauses guiding the matter of adjournment etc. The above provisions contain the amendment, brought by Amendment Act 46 of 1999 effective from 01.07.2002.

(8) In Salem's case vide Para 31, while considering the amended provisions of Order XVII Rule 1(1), the Apex Court observed that in some extreme cases, it may become necessary to grant adjournment despite the fact that 3 adjournments have already been granted. It quoted many examples and further said that ultimately, it would depend upon the facts and circumstances of each case on the basis whereof the Court would decide to grant or refuse adjournments. The provision for costs and higher costs has been made because of the practice having been developed to award only nominal costs even when adjournment on payment of costs is granted. Ordinarily, where the costs or higher costs are awarded, the same should be realistic, and as far as possible actual costs that had to be incurred by the other party shall be awarded where the adjournment is found to be avoidable, but is being granted on account of either negligence or casual approach of a party or is being sought to delay the progress of the case or on any such reason. Further, to save the proviso to Order 17 Rule 1(1) from the vice of Article 14 of the Constitution, it is necessary to read it down so as not to take away the discretion of the Court in the extreme hard cases noted above. The Apex Court further stated that the limitation of three adjournments would not apply where adjournment is to be granted on account of circumstances

which are beyond the control of a party. Even in cases which may not strictly come within the category of circumstances beyond the control of a party, the Court by resorting to the provisions of higher costs which can also include punitive costs in the discretion of the Court, adjournment beyond three can be granted having regard to the injustice that may result on refusal thereof, with reference to peculiar facts of a case. The Apex Court, however, adds that grant of any adjournment, let alone the first, second or third adjournment, is not a right of a party. The grant of adjournment by a Court has to be on a party showing special and extraordinary circumstances. It cannot be in routine. The Supreme Court cautioned that while considering the prayer for grant of adjournment, it is necessary to keep in mind the legislative intent to restrict the grant of adjournments.

(9) A perusal of the provisions of Order XVII Rule 1(1) C.P.C., as amended by Act 46 of 1999 as well as the observations recorded by the Apex Court in the Salem's case, what makes it clear that the provisions made in sub rule (1) of Rule 1 of Order XVII are not mandatory so as to deprive the jurisdiction of a Court to grant further adjournments for more than three. What the law on the point is that even the adjournment, may be first, second, or third, should not be granted either as a matter of right of a party or as a matter of routine and for the purpose of grant of adjournment, particularly, beyond 3 adjournments, special and extraordinary circumstances are to be set forth by a party praying therefor so that, the legislative intent to restrict the grant of adjournment may be fulfilled. In a given case, on the grounds raised by a party, the

Court has to apply its mind and then it should give a conclusion as to whether the adjournment should be granted or not.

(10) In the case on hand, a perusal of the impugned order would show that the Court below has not commented on the ground of adjournment raised by the plaintiff. The plaintiff had approached the Court by taking special ground that as she is working as a Professor in the C.M.D. College, Bilaspur and she could not get leave for the day, on which date the matter was fixed, the plaintiff or her witnesses are not present, and therefore, adjournment was sought by her. The trial Court has not commented on the ground setforth by the plaintiff and, in fact, without applying the mind on the said grounds raised by the plaintiff, wholly depending on the provisions of Order XVII Rule 1 C.P.C., the trial Court has passed the impugned order and has simply said that since the plaintiff has already taken adjournments on earlier three occasions, therefore, she would not be entitled for 4th adjournment and the rights of the plaintiff to adduce evidence are required to be closed. The trial Court has not at all dealt with the aspect as to whether the ground set forth by the plaintiff strictly comes within the category of a circumstance beyond the control of a party or not, nor it has dealt with another aspect that whether the refusal to grant adjournment may result into injustice to the parties. It has simply passed the order depending on the provisions of Order XVII Rule 1(1) CPC. In the opinion of this court, it was a case in which the plaintiff has setforth a circumstance which was certainly beyond her control and for that she was entitled to grant of one more adjournment in the particular facts and circumstances of

this case. Therefore, the impugned order passed by the trial Court is not in accordance with law and the same requires to be set aside by this Court.

(11) With an intention to give complete opportunity to both the parties to produce their evidence, I deem it proper to afford a last opportunity to the plaintiff, in peculiar facts and circumstances of this case, by imposing certain conditions. Accordingly, the petition is allowed and the impugned order is set aside on the following conditions.

(i) The petitioner/plaintiff shall produce her all witnesses/evidence on her own risk on a date to be fixed by the trial Court which shall not be far than 1 ½ months from the first date falling on which the case is already fixed by the said Court.

(ii) If the evidence of the plaintiff's side is not completed on the said date, the matter shall be adjourned to the next subsequent day and ultimately it has to be completed by adopting the procedure of day to day hearing.

(iii) The above order shall further subject to the payment of cost of Rs.2000/- (Rupees Two thousand) by the plaintiff to the other side which shall be paid/ deposited prior to the commencement of her evidence.

(12) This writ petition stands allowed with the aforesaid directions.

Sd/-
Sunil Kumar Sinha
Judge

Rao